



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

P: PAPERREMOTE

Case Reference : **CAM/00MD/LSC/2020/0039**

Property : **11-15 Rockall Court
Langley
Slough
SL3 8EZ.**

Applicant : **Imtiaz Mehdi Mohamed and Nasim
Mohamed**

Respondent : **Meadfield Court Management Company
Limited**

Type of Application : **Application for permission to appeal**

Tribunal Members : **Tribunal Judge Stephen Evans
Ms Marina Krisko FRICS**

**Date of original
decision** : **9 August 2021**

Date of this Decision : **12 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision. The form of remote decision is P: PAPERREMOTE. A face-to-face hearing was not held because this is an application for permission to appeal. The documents before the Tribunal are contained in the original bundle and the application for permission to appeal dated 6 September 2021.

DECISION

- 1. The Tribunal determines that it will not conduct a review pursuant to rules 53 and 55 of the First-tier Tribunal (Property Chamber) Rules 2013 because it is not satisfied that a ground of appeal is likely to be successful.**
- 2. The Tribunal further determines that permission to appeal be refused, as there are no reasonable prospects of success and no other compelling reason why an appeal should be heard.**
- 3. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.**
- 4. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk .**

Background

1. The Tribunal received on 6 September 2021 an application for permission to appeal the decision dated 9 August 2021, which had been sent to the parties on 10 August 2021.
2. The application runs to some 17 pages.

Paragraph 28 of the decision

3. The Applicants' arguments do not have a realistic prospect of success on appeal. The matter of lease interpretation and construction of the parties' true bargain was for the Tribunal, whatever representations may have been made

by the Respondent. That was not an issue introduced by the Tribunal of its own motion. The Applicant had full opportunity both orally and in writing to advance its case on lease interpretation. The Tribunal disagreed with the Applicant's construction. The Tribunal agreed with the Respondent's contention that no audit was required. The Applicants have not challenged the Tribunal's finding that, as long as they had a certified statement in good time for them to pay (or be refunded) any money on 1st January of the following year, that was sufficient for their purposes.

Paragraphs 29 to 31 of the decision

4. The Tribunal repeats paragraph 3 above. The Applicants' arguments turn on the same arguments as they advance under paragraph 28.

Paragraph 32 of the decision

5. The application does not have a realistic prospect of success on appeal. Clause 2(c) of the 6th Schedule does not refer to an Annual General Meeting at which members vote, nor any date by which the same had to take place.

Paragraphs 33 to 38 of the decision

6. The Respondent made a clear contention that the Applicants' argument that the accounts were generated late each year "has never previously been challenged by any Leaseholder": see Respondent's statement of case at para. 35(ii) on p.135. The Applicants were invited by the Tribunal to respond to the fact that complaint had never been made, but they were unable to provide any reasonable explanation whatsoever.
7. The Tribunal's findings in relation to estoppel by convention came in the light of the above. The Tribunal struck a balance between the position of the Applicant and the position of the Respondent (who contended that the Applicants' acquiescence meant they had agreed all the charges, such that the application *in toto* should fail). The fact remains that the Applicants did not in fact challenge the Respondent's operation of the service charge machinery at any time. It is inequitable for them to be able to do so now. Whether that is phrased in terms of estoppel by convention or estoppel by acquiescence matters not on the facts of the instant case.
8. The Tribunal is not assisted by facts in other cases of estoppel by convention which are different to the instant facts. The classic exposition of the law in *India Steamship* is the correct exposition of the law. In the absence of any explanation whatsoever for the Applicants' conduct in this case, the Tribunal was entitled to find there was a process adopted by the Respondents (i.e. the operation of the service charge machinery) which was acquiesced in by the Applicants. Lord Steyn's exposition does not require any more, save that it be unjust for the party estopped to go back on the state of affairs.

Scott Schedule items

9. The Applicants' contentions have no realistic prospect of success. The sums for each year are capable of easy calculation. If the parties cannot agree, they can make an appropriate application to the Tribunal.

Paragraph 43

10. The Applicants' contentions have no realistic prospect of success. It is not enough for the evidence to "point towards" a QLTA. The Applicants failed to adduce any evidence from which the Tribunal would have been compelled to draw the irresistible inference there was a QLTA. The oral evidence from the Respondent denied a QLTA.

Paragraph 45

11. The Tribunal remains satisfied there are communal windows which required cleaning. The Tribunal received detailed evidence from the Respondent, which was not gainsaid by the Applicants. The Applicants' contentions have no realistic prospect of success.

Paragraphs 68 and 70

12. The Tribunal was satisfied, despite the absence of the physical documents, that the reports were commissioned, and that the works were necessary, and that they were reasonable in amount. The Applicants' contentions have no realistic prospect of success.

Paragraphs 74-76

13. The Tribunal did take into consideration the absence of documentation for some years, and we made full allowance for missing documents by not increasing the premium sought.
14. The Applicants' contentions have no realistic prospect of success.

Paragraph 77

15. The Applicants case was that "this item is agreed, if the amounts are seen as payable". The Tribunal found that the amounts were not payable.
16. The Applicants' contentions have no realistic prospect of success.

Paragraph 81

17. The Applicants' position on their written case in December 2020 was that they would produce further submissions once the Respondent's alleged disclosure

breach had been rectified. The final hearing of the matter in August 2021 was too late to adduce full submissions, especially without notice to the Respondent. The Tribunal was compelled to make the decision it did on the limited material before it, and in the time available to it.

18. The Applicants' contentions have no realistic prospect of success.

Paragraph 140

19. The Applicants were not prevented from addressing the Tribunal on any point. Their evidence on the matter was poor. The Scott Schedule alleged a "possible mistake". Having heard from the Respondent, the Tribunal was satisfied there was no mistake.

20. The Applicants' contentions have no realistic prospect of success.

Paragraphs 226-228

21. The Applicants' contentions have no realistic prospect of success. The lack of disclosure and poor management by the Respondent was reflected in a substantial discount on management fees.

22. The Applicants have failed to acknowledge that they lost on a substantial number of items.

23. The s.20C order was in all the circumstances open to the Tribunal in its wide discretion.

General

24. There is no point of principle arising from this proposed appeal, in the Tribunal's view, nor is there any other good reason why an appeal should be heard.

Name: Tribunal Judge S Evans **Date:** 12 October 2021